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SUMMARY RECORD OF THE 54th MEETING
(SECOND PART*)

Held at the Palais des Nations, Geneva,
on Wednesday, 6 March 1991, at 3 p.m.

Chairman: Mr. BERNALES BALLESTEROS (Peru)

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Consideration of draft resolutions and decisions relating to agenda item 19 (continued)

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* The summary record of the first part of the meeting appears as document E/CN.4/1991/SR.54.

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1. Mr. SENE (Senegal) agreed with the views expressed by Mrs. Quisumbing. Questions of substance could not be dissociated from questions of procedure, which had an impact on decision-making. In view of the profound changes taking place worldwide, in which human rights played a significant part, it was essential to strengthen the independence of the expert members of the Sub-Commission, and that was the purpose of the draft resolution submitted by the Cuban delegation (E/CN.4/1991/L.71) and the amendments to it proposed by the French delegation. It was a fact that the Sub-Commission experts were sometimes subjected to pressure and even to threats and the Commission had already adopted a draft resolution on ways to guarantee the immunities and security of the members of the Sub-Commission and of the United Nations human rights bodies in general (E/CN.4/1991/L.35). The experts of the Sub-Commission must be able to exercise their right to vote in a fully independent manner, be it a vote by show of hands or by secret ballot. That was the point at issue that the Commission must consider without becoming too involved in procedural quarrels. It was the Chairman's responsibility to guide the deliberation so that the necessary decisions could be taken without delay, it being understood that every effort must be made to preserve the true independence of the expert of the Sub-Commission by seeing to it that they were able to express themselves freely.

2. The CHAIRMAN said that he was not opposed to a debate on the substance of the question, but first he must ask the Commission to vote on the procedural motion submitted by the Cuban delegation, which concerned primarily the fifth amendment proposed by the French delegation.

3. Mr. KHAN (Pakistan) took the view that the amendments submitted by France were a new proposal and not amendments as defined in rule 63 of the rules of procedure of the functional commissions of the Economic and Social Council, according to which "an amendment is a proposal that does no more than add to, delete from or revise part of another proposal".

4. Mr. ALFONSO MARTINEZ (Cuba) said that, in his opinion, the Commission must vote on his delegation's motion to consider the fifth amendment proposed by France to be a new proposal, and not an amendment as defined in rule 63 of the rules of procedure. His delegation would vote in favour of that motion.

5. Mr. GOMPERTZ (France) said that his delegation would of course vote against the motion submitted by the Cuban delegation.

6. The CHAIRMAN, replying to a question by the Australian delegation, said that in order to avoid any confusion, the Commission should vote on the procedural motion submitted by the Cuban delegation, which considered that the fifth amendment submitted by France was not a true amendment as defined in rule 63 of the Commission's rules of procedure. Therefore, those delegations that agreed with the Cuban delegation's interpretation of the amendment should vote in favour, and those that disagreed should vote against.

7. At the request of the representative of Cuba, a vote was taken by roll-call on the procedural motion submitted by the Cuban delegation.

8. Cyprus, having being drawn by lot by the Chairman, was called upon to vote first.

In favour: Bangladesh, Burundi, China, Colombia, Cuba, Ethiopia, Ghana, India, Indonesia, Iraq, Madagascar, Pakistan, Peru, Philippines, Somalia, Yugoslavia, Zambia.

Against: Australia, Austria, Belgium, Brazil, Canada, Czech and Slovak Federal Republic, France, Germany, Hungary, Italy, Japan, Mauritania, Panama, Portugal, Senegal, Sweden, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United States of America.

Abstaining: Argentina, Cyprus, Mexico, Morocco, Swaziland, Venezuela.

9. The procedural motion submitted by the Cuban delegation was rejected by 17 votes to 19, with 6 abstentions.

10. The CHAIRMAN invited the members of the Commission to vote on the substance of the amendments to draft resolution E/CN.4/1991/L.71 proposed by the French delegation.

11. Mr. BOSSUYT (Belgium) said that the Commission had already adopted a draft resolution reaffirming the importance it attached to the independence of the Sub-Commission's experts; the latter were sometimes pressured by their own Government or other Governments, which explained why they had deemed, by an overwhelming majority, that voting by secret ballot was one way to strengthen their independence. The amendments submitted by France had an unquestionable advantage over the text of draft resolution II emanating from the Sub-Commission itself (E/CN.4/1991/2, chapter I, section A), because they implied an option and not a general rule and because it was better to interpret the rules of procedure than to amend them by a footnote. For that reason, Governments that truly respected the independence of the experts of the Sub-Commission should have no reservations whatsoever about supporting the amendments.

12. Mr. BARKER (Australia) agreed with the representatives of India and the Philippines that the independence of the members of the Sub-Commission was an important question that must be considered in depth; nothing, however, prevented the Commission from endorsing for the immediate future the proposed amendments, which constituted a first step towards strengthening the independence of experts.

13. He had had occasion to attend two Sub-Commission sessions and was convinced that its members discharged their functions with devotion and integrity and in a fully independent manner. However, many of them came from distant countries and, being isolated in Geneva, could be subjected to pressure in various ways. For that very reason, at its forty-second session the Sub-Commission had considered voting by secret ballot to be essential and had adopted a draft resolution on the question by 20 votes to 2, with 2 abstentions. The members of the Sub-Commission themselves obviously believed that a measure such as the one envisaged in the amendments submitted by France would help to strengthen their independence and enable them to discharge their mandate more effectively; consequently, the Commission should approve the French proposal.

14. Mr. GEBRE-MEDHIN (Ethiopia) did not think that voting by secret ballot would strengthen the independence of the Sub-Commission's experts. The members of an expert body, be it the Sub-Commission or any other, must have the courage of their convictions and must vote as their conscience dictated. It was understandable that the Commission or the Sub-Commission should take steps to assure the independence of experts, but they should not seek to do so by adopting measures that might destroy the credibility of the body concerned. Thus, his delegation was convinced that rule 59 of the rules of procedure should not be amended in any way, and it would vote against the draft resolution submitted to the Sub-Commission if it was put to a vote.

15. The amendments proposed by the French delegation were unacceptable, because they did not meet the concerns expressed by a number of delegations. To propose that the Economic and Social Council should interpret the rules of procedure as they pertained to the Sub-Commission was tantamount to ruling out any possibility of an exchange of views. It was not for the Commission to make recommendations to the Economic and Social Council; it should restrict itself to submitting proposals, because the Commission on Human Rights was a subsidiary body of the Economic and Social Council and not vice versa. Thus, his delegation could not support the amendments proposed by France, the sole purpose of which was to have the Economic and Social Council approve a decision taken by the Sub-Commission that had not found a consensus in the Commission.

16. The draft resolution submitted by the Cuban delegation (E/CN.4/1991/L.71) was not totally satisfactory, because postponing consideration of the problem was certainly not a way to resolve it. Given the circumstances, however, the draft resolution provided a compromise solution, and his delegation was therefore prepared to support it at the current stage, although that by no means changed Ethiopia's position.

17. Mrs. QUISUMBING (Philippines) said that in view of the importance of the question raised in the draft resolution, it would have been desirable for the Commission to take a decision by consensus to show the Sub-Commission, once and for all, that it was interested in its work and in the way in which it discharged its mandate. The fact that the Commission was so divided on the draft resolution, including the procedural issues, suggested that it was perhaps too soon to take a definitive decision on that important question.

18. Her delegation was of the view that the amendments submitted by the French delegation to paragraphs 2 and 3 of the revised text of draft resolution E/CN.4/1991/L.71 did not constitute an improvement of draft resolution II adopted by the Sub-Commission (E/CN.4/1991/2, chapter I, section A) and could not support it for three essential reasons: firstly, the Commission could hardly ignore the very clear opinion formulated by the Legal Counsel of the United Nations and interpret as it pleased or, even worse, request the Economic and Social Council to do so. Secondly, it was apparent from the new paragraph 1 proposed by the French delegation that various interpretations of the rules of procedure would be possible, depending on whether the Sub-Commission or another body was concerned; that did not seem proper. Thirdly, paragraph 2 of the amended draft resolution recommended for adoption by the Economic and Social Council was contrary to the general rule that voting was always by a show of hands or by roll-call. To authorize the Sub-Commission to take a decision by secret ballot based on a decision of the

majority of its members present and voting would be tantamount to interpreting rule 59 of the rules of procedure in a selective fashion, rather than amending it.

19. Her delegation agreed with the delegation of Ethiopia on the draft resolution submitted by the Cuban delegation (E/CN.4/1991/L.71), because the decision on that question was too important to be postponed until 1992. But as draft resolution II submitted by the Sub-Commission (E/CN.4/1991/2, chapter I, section A) had not won the unanimous support of the Commission and as it was important to impress upon the members of the Sub-Commission that they must take the rules of procedure seriously and could not use them as they saw fit, it might be preferable to request the Sub-Commission to consider the matter again.

20. Lastly, her delegation was not convinced that experts from distant countries, as certain delegations had suggested, were more vulnerable than others to pressure that undermined their independence. If it was true that members of the Sub-Commission had been threatened, why had the Commission not been informed or why had it remained silent on the matter? The independence of experts was too important an issue to give rise to a hasty decision; her delegation would therefore abstain in the vote on the proposed amendments.

21. Mr. GRILLO (Colombia) agreed that the question of the independence of the Sub-Commission's experts was of vital importance and therefore could not be resolved by voting by secret ballot. It was up to all the members of the Sub-Commission to elect truly independent experts, and his delegation believed that the problem should be raised before the Economic and Social Council. In the meantime, his delegation would abstain in the vote on the texts submitted.

22. Mr. DAYAL (India), noting that the dates of the opinions given by the Legal Counsel of the United Nations differed in the text submitted by the Cuban delegation from those in the amendments proposed by the French delegation, requested clarifications.

23. Mr. GOMPERTZ (France) thanked the Indian delegation for drawing attention to the error that had found its way into the text of the French amendment. The opinions of the Legal Counsel of the United Nations had, in fact, been formulated on 16 February 1984 and 31 July 1989, as indicated in the text of the draft resolution submitted by the Cuban delegation.

24. Mr. DAYAL (India) recalled that the opinion formulated by the Legal Counsel of the United Nations to the effect that it was appropriate for the Sub-Commission to hold secret ballots only if the decision to do so had the agreement of all its members or if the matter under discussion was comparable to an election. Consequently, he wondered what was the point of asking the Legal Counsel for his opinion and stating in the draft resolution that the Commission would bear it in mind if it was not taken into account. By so doing, the Commission was creating a dangerous precedent. His delegation agreed with Mrs. Quisumbing, who had stressed the overriding importance of the independence of the Sub-Commission's members, and would like to hear the opinion of other delegations before deciding how it would vote.

25. Mr. FULDA (Germany) said that the draft resolution submitted by the Sub-Commission had been adopted by the overwhelming majority of its members. The fact that it had been necessary to vote on the draft showed clearly that not all the experts had agreed as to how their independence could be protected, no doubt because not all the members of the Sub-Commission were in the same situation as the representative of Cuba, who, in his capacity of representative of his country to the Commission on Human Rights, seemed well-qualified to guarantee the independence of the Cuban experts of the Sub-Commission. Germany was convinced that the Commission's role was not only to give guidance to the Sub-Commission, which was one of its subsidiary bodies, but also to take into account the views of its members. The dialogue between the Commission and the Sub-Commission only made sense if the Commission took seriously the concerns expressed by the majority of the members of the Sub-Commission, in particular with regard to such an important question as their independence. Those concerns were duly reflected in the amendments submitted by the French delegation, which constituted a well-balanced compromise between the divergent views and consequently deserved full support.

26. Mr. ALFONSO MARTINEZ (Cuba) pointed out that he was not the only Sub-Commission expert who was also his country's representative in the Commission on Human Rights, and no one had ever questioned his status or independence. He could cite many other similar cases, including that of the German expert. His delegation would vote against the fifth amendment submitted by the French delegation for a number of reasons. Firstly, it encroached upon the competence and the jurisdiction of the Sub-Commission. Any United Nations body, including the Sub-Commission, was entitled to interpret its rules of procedure, and it was therefore for the Sub-Commission to do so, not the Economic and Social Council, as the amendment in question proposed. On the other hand, only the Economic and Social Council was empowered to amend the rules of procedure; that task could not be assigned to the Sub-Commission, as the amendment implied. Secondly, it was unthinkable that the Sub-Commission should attach so little importance to its rules of procedure that it could amend them at any time by a simple majority vote, as was being suggested. For that reason, his delegation continued to believe that the text submitted by the French delegation was not an amendment but a new proposal.

27. Lastly, as far as the threats said to have been levelled against certain expert members were concerned, he had long experience of the Sub-Commission and could attest to the fact that there had only been three such cases in the body's 42 years of existence. One should therefore not conclude that the experts of the Sub-Commission were constantly being so harassed that they could not act independently, as some would have the Commission believe. Consequently, his delegation would vote against the amendments proposed by the French delegation.

28. Ms. ANDREYCHUK (Canada) said she found it curious that the Commission would accept the view that an opinion of the Legal Counsel of the United Nations was binding on the Commission. Although the Commission had to take that opinion very seriously, it had the right, on the basis of other considerations, to decide otherwise. It was probable that most members of the Sub-Commission fulfilled their task properly, regardless of how they had been appointed, and that few of them had actually been subjected to pressure. One might, however, ask why so many of them had voted in favour of the draft

resolution adopted by the Sub-Commission. She wondered whether it was necessary to wait until proof of such pressure had been provided before taking the necessary measures to guarantee the independence of the experts. In the view of her delegation, the amendment proposed by France was a first step in that direction, and its adoption should not prevent the Commission from continuing the debate on the question.

29. Mrs. SANTO PAIS (Portugal) said that it was essential to strengthen the independence of the members of the Sub-Commission and their objectivity in assessing allegations of human rights violations. To adapt the amendments to draft resolution E/CN.4/1991/L.71 proposed by the French delegation would allow the Sub-Commission to have recourse to voting by secret ballot, which was one way of recognizing its competence and its independence. It could not be repeated often enough that the members of the Sub-Commission had themselves requested the Commission to permit them to vote by secret ballot in certain cases, and they were in the best position to assess their needs. Her delegation would therefore vote in favour of the amendments.

30. Mr. GOMPERTZ (France), responding to the concerns voiced by a number of representatives with regard to the opinion formulated by the Legal Counsel of the United Nations, said that the text of that opinion was much too long to be quoted in full, and it was not necessary to attach too much importance to it. It had been deemed wiser to indicate that the Commission would bear that opinion in mind, without focusing on a particular aspect.

31. His delegation had also taken the view that it would be dangerous to give a systematic character to the use of the secret ballot or to amend the rules of procedure of the technical commissions of the Economic and Social Council; for that reason, France proposed replacing, in the last paragraph of the draft resolution recommended to the Economic and Social Council for adoption, the words "will vote" by "may vote", so as to give the Sub-Commission a degree of latitude without imposing a systematic practice. The request to the Economic and Social Council to interpret the rules of procedure of the Sub-Commission did not impair the latter's sovereignty, because the Sub-Commission itself had raised the issue in complete independence and sovereignty and had requested the Commission and the Council to help it to find a solution. Regardless of its decision, and even if that decision ran counter to the draft resolution submitted by the Sub-Commission, the Commission would only be replying to a question put to it by the Sub-Commission.

32. Lastly, his delegation was well aware that the question of the independence of experts was a complex one and went well beyond the issue of the secret ballot. The proposed amendment was only one aspect of the solution to that problem and a compromise of the various views expressed. It was a first attempt to strengthen the independence of experts; clearly, that objective was still far from being achieved.

33. Mr. CHABALA (Zambia) said that, with all due respect for the decision adopted by the Sub-Commission, his delegation was not convinced that the only or best way to protect and guarantee the independence of the experts of the Sub-Commission was to allow them to vote by secret ballot. As pointed out by the representative of Cuba, there also appeared to have been very few cases of pressure being exerted upon the Sub-Commission's experts. Furthermore, the

members were elected for a fixed period, and, as a consequence, such pressure could not continue indefinitely. It was important not to generalize about what might only be a temporary, and not permanent, problem.

34. In the view of his delegation, the texts submitted by Cuba and France were unsatisfactory. The amendment proposed by the French delegation was tantamount to forcing the Economic and Social Council to interpret the rules of procedure, and that impinged upon its sovereignty. The draft resolution submitted by the Cuban delegation would have been preferable if it had been left in its original form. However, it was more balanced than the French amendment and could thus serve as a starting point for tackling the problem.

35. Mr. BOSSUYT (Belgium) stressed that the rules of procedure could be interpreted either on the basis of the opinion by the Legal Counsel of the United Nations or, in practice, by the Sub-Commission. In the event of a conflict, however, the Economic and Social Council, having drafted and adopted the rules of procedure, was alone competent to interpret them in the last instance, and its interpretation, which was authoritative, was binding both on the Legal Counsel and the Sub-Commission. The amendment submitted by the French delegation thus offered a suitable solution to the problem facing the Commission, and his delegation supported it.

36. Mr. ALFONSO MARTINEZ (Cuba) said that his delegation had submitted draft resolution E/CN.4/1991/L.71 because it had had the impression that the Sub-Commission's draft resolution had not received the support of all the members of the Commission. But if the Commission considered that it was preferable to disregard the new texts proposed and to vote on the draft resolution transmitted to it by the Sub-Commission or to take any other decision, his delegation would not press for a vote on draft resolution E/CN.4/1991/L.71, as orally amended.

37. The CHAIRMAN took it that the Commission approved the amendments that would add, in the second preambular paragraph, the words "in particular paragraphs 43, 47, 50, 52, 54 and 55 of that document" and replace the third preambular paragraph by the following: "Bearing in mind the opinions of the Legal Counsel of the United Nations dated 16 February 1984 and 31 July 1989". He invited the members of the Commission to vote by a show of hands on the amendment to insert a new preambular paragraph, which would become the third paragraph, worded as follows: "Believing that situations of serious violations of human rights in certain countries which come before the Sub-Commission may require the use of a secret ballot to strengthen the independence of the membership".

38. The amendment was adopted by 25 to 6, with 12 abstentions.

39. At the request of the representative of Cuba, a vote was taken by roll-call on the amendment by France relating to paragraphs 1 and 2 of draft resolution E/CN.4/1991/L.71 (paras. 2 and 3 in the revised version).

40. The Philippines, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Argentina, Australia, Austria, Belgium, Brazil, Canada, Czech and Slovak Federal Republic, France, Gambia, Germany, Hungary, Italy, Japan, Mauritania, Mexico, Panama, Portugal, Senegal, Sweden, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United States of America, Venuezela.

Against: China, Cuba, Ethiopia.

Abstaining: Bangladesh, Burundi, Colombia, Cyprus, Ghana, India, Indonesia, Iraq, Madagascar, Morocco, Pakistan, Peru, Philippines, Somalia, Swaziland, Yugoslavia, Zambia.

41. The amendment relating to paragraphs 2 and 3 of the revised version of draft resolution E/CN.4/1991/L.71 was adopted by 23 to 3, with 17 abstentions.

42. The CHAIRMAN invited the members of the Commission to vote on the draft resolution as a whole, as amended, contained in document E/CN.4/1991/L.71/Rev.1.

43. Mr. ALFONSO MARTINEZ (Cuba), speaking in explanation of vote before the vote, said that having voted against the amendments submitted by the French delegation, which had been adopted by the Commission and were thus incorporated into the text of draft resolution E/CN.4/1991/L.71, his delegation would also vote against draft resolution E/CN.4/1991/L.71/Rev.1 as a whole.

44. Draft resolution E/CN.4/1991/L.71/Rev.1 was adopted by 23 votes to 4, with 15 abstentions.

45. The CHAIRMAN said that the adoption of draft resolution E/CN.4/1991/L.71/Rev.1 by the Commission meant that it had rejected draft resolution II submitted by the Sub-Commission, which appeared in its report to the Commission on its forty-second session (E/CN.4/1991/2, chapter. I, section. A). He invited the members of the Commission who so wished to speak in explanation of vote after the vote.

46. Mr. SENE (Senegal) said that the adoption of the draft resolution should strengthen the relationship of confidence that had developed between the Commission and the Sub-Commission. The Sub-Commission had wished the Commission to take a decision to strengthen the independence of the experts, and it was natural for the Commission, in turn, to refer the question to the Economic and Social Council by submitting concrete proposals to it. His delegation thanked the representative of Cuba for having submitted draft resolution E/CN.4/1991/L.71, which had provided a good basis for discussion. The Commission had thus fulfilled its mandate, and its work with the Sub-Commission would in the future be based upon mutual respect and cooperation in the quest for solutions to human rights problems of common concern.

47. Mr. DAYAL (India) said that his delegation had abstained in the vote on draft resolution E/CN.4/1991/L.71/Rev.1 because, in its view, no procedural vote could guarantee the independence of experts. Nor was India entirely convinced that the Sub-Commission should continue to vote on draft resolutions relating to human rights violations because, in so doing, it departed from its initial mandate, which was to conduct studies for the Commission on Human Rights. That question must be given consideration in the future.

48. Mr. WIELAND (Peru) said that his delegation had abstained in the vote on draft resolution E/CN.4/1991/L.71/Rev.1 because it considered the independence of the experts of the Sub-Commission to be a question of overriding importance that required a consensus decision.

49. Mr. MUYOVU (Burundi) said that the ends must never justify the means, even for a most praiseworthy cause. In his view, the amendments submitted by the French delegation blithely disregarded the principles set forth in the rules of procedure. His delegation was convinced that a way must be found to protect the experts of the Sub-Commission other than that proposed in draft resolution E/CN.4/1991/L.71/Rev.1, and, for that reason, Burundi had abstained in the vote on the draft.

50. Mr. JAMTOMO (Indonesia) said that it would have been preferable and more useful to consider the question of the independence of the experts of the Sub-Commission again, as had been proposed in paragraph 1 of draft resolution E/CN.4/1991/L.71. In accordance with the opinion formulated by the Legal Counsel of the United Nations, the Sub-Commission should only hold secret ballots in exceptional circumstances, and that was not the case when it took decisions on the situation of human rights in countries. If the independence of the members of the Sub-Commission was to be strengthened, they must be given the opportunity to express their expert opinions freely and, by so doing, to make a useful contribution to the work of the Commission.

The meeting rose at 11.45 p.m.